

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

ROGER REDFORD)	
Claimant)	
VS.)	
)	Docket No. 192,613
ANR FREIGHT SYSTEM)	
Respondent)	
AND)	
)	
PLANET INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Claimant appeals from an October 14, 1996, Order entered by Administrative Law Judge Steven J. Howard. The parties waived briefs and oral argument as this case had previously been briefed and argued to the Appeals Board.

ISSUES

An Award was entered in this matter on May 1, 1996, by Administrative Law Judge Steven J. Howard. That Award denied benefits to claimant based upon a finding that claimant was not disabled for a period of at least one week citing K.S.A. 44-501(c). Claimant appealed that Award to the Appeals Board which held the Kansas Legislature expressly provided that the 1996 amendments to K.S.A. 44-501(c) should be applied retroactively. See K.S.A. 1996 Supp. 44-501a. This matter was remanded to the Administrative Law Judge for a determination of the remaining issues with directions that an award be entered in accordance with the findings and conclusions of the Appeals Board's September 27, 1996, Order. On October 14, 1996, the Administrative Law Judge entered an Order reiterating his previous ruling that the 1996 amendments to K.S.A. 44-501(c) should be judicially construed to operate prospectively only, despite the clear statement of legislative intent to the contrary. The Order is silent as to any of the issues

for which the case was remanded to the Administrative Law Judge for decision other than to state the Administrative Law Judge's belief that the Appeals Board should resolve those issues. Accordingly, the sole issue for Appeals Board review is whether the October 14, 1996, Order by Administrative Law Judge Steven J. Howard complies with the Appeals Board's September 27, 1996, Order of remand.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Appeals Board finds the October 14, 1996, Order from which claimant appeals to be a nullity. It fails to address any of the issues presented at regular hearing and for which this case was remanded to the Administrative Law Judge for determination. Said Order merely repeats the Administrative Law Judge's finding in his May 1, 1996, Award that the 1996 amendments to K.S.A. 44-501(c) cannot be given retrospective application despite the language clearly indicating that the legislature intended that such retrospective application be given to "any claim brought under the Kansas Workers Compensation Act for an injury which occurred prior to the effective date of this act, unless any claim has been fully adjudicated." K.S.A. 1996 Supp. 44-501a.

"It is the function of a court to interpret a statute to give it the effect intended by the legislature." In re Tax Exemption Application of City of Wichita, 255 Kan. 838, Syl. ¶ 6, 877 P.2d 437 (1994).

"When a statute is clear and unambiguous, the court must give effect to the statute as written, and there is no need to resort to statutory construction." State v. Soddors, 255 Kan. 79, Syl. ¶ 4, 872 P.2d 736 (1994).

Without expressly stating so, the Administrative Law Judge's Award was a ruling on the constitutionality of the 1996 amendments to K.S.A. 44-501 and on K.S.A. 1996 Supp. 44-501a. The propriety of such a ruling by an administrative law judge is questionable and the Appeals Board has previously determined such a ruling to be inappropriate and beyond the authority of an administrative law judge. This issue notwithstanding, the Appeals Board has ruled in this case that the statute should be given its plain meaning and should be applied by the Administrative Law Judge as written. The matter was remanded with these directions. The Administrative Law Judge chose to disregard those directions on remand. Therefore, this case is again remanded to the Administrative Law Judge with directions to follow the law as the Appeals Board has found it to be. Such is the law of this case and will remain so until it is reviewed and modified by a higher court.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the October 14, 1996, Order by Administrative Law Judge Steven J. Howard should be, and is hereby, reversed and remanded to the Administrative Law Judge with directions that an award be entered in favor of claimant and against respondent and its insurance carrier for compensation; and to specifically decide the remaining issues of nature and extent of claimant's disability; the offset, if any, pursuant to K.S.A. 1996 Supp. 44-501(c) for any preexisting condition; and future medical.

IT IS SO ORDERED.

Dated this ____ day of January 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Davey C. Walker, Kansas City, KS
David M. Druten, Kansas City, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director